

quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1079.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1079.42 Classification of transfers and diversions.**

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or diverttee-plant after the computations pursuant to § 1079.44(a)(12) and the corresponding step of § 1079.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products;

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1079.44(a)(7) or the corresponding step of § 1079.44(b), the skim milk or butterfat so transferred or diverted shall be

classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1079.44(a) (11) or (12) or the corresponding step of § 1079.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or diverttee plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraphs (b) (1), (2) or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other

order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1079.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (a) and (b) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(a) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1079.30 for the month within which such transaction occurred; and

(b) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to

the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class II utilization, and then to Class III utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in paragraph (d)(2) of this section.

(e) *Transfers by a handler described in § 1079.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1079.9(c) to a pool plant shall be classified pursuant to § 1079.44 pro rata with

producer milk received at the transferee-handler's plant.

[42 FR 17423, Apr. 1, 1977, as amended at 44 FR 29430, May 21, 1979; 58 FR 27869, May 11, 1993]

#### § 1079.43 General classification rules.

In determining the classification of producer milk, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1079.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1079.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1079.40, 1079.41, and 1079.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1079.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1079.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1079.44. Any remaining skim milk and butterfat in concentrated receipts shall